APPENDIX A

Extracts from Bills Dealing with Bank Holding Companies —Sections Containing the Phrase, "other than a bank".

H.R. 6504, 82d Cong., 2d Sess. (introduced in 1952):

> "Sec. 5. (a) It shall be unlawful except with the prior approval of the Board
>
> (3) for any bank holding company or subsidiary thereof *other than a bank* to acquire all or substantially all of the assets of a bank." (Italics supplied.)

Hearing before the House Committee on Banking and Currency on H.R. 6504, 82d Cong., 2d Sess. (June 24, 1952), p. 2.

S. 1118, 83d Cong., 1st Sess. (introduced in 1953):

> "Sec. 5. (a) It shall be unlawful except with the prior approval of the Board
>
> (3) for any bank holding company or subsidiary thereof *other than a bank* to acquire all or substantially all of the assets of a bank." (Italics supplied.)

Hearings before the Senate Committee on Banking and Currency, 83d Cong., 1st Sess. on S. 76 and S. 1118, part 1 (June 10, 11 and 12, 1953), p. 5.

H.R. 2674, 84th Cong., 1st Sess. (introduced in 1955):

> "Sec. 5. (a) It shall be unlawful except with the prior approval of the Board
>
> (3) for any bank holding company or subsidiary thereof, *other than a bank* to acquire all or substantially all of the assets of a bank." (Italics supplied.)

Hearings before the House Committee on Banking and Currency, 84th Cong., 1st Sess. on H.R. 2674 (February 28, March 1, 2, 3, 4, 7, 8 and 9, 1955), p. 2.

S. 880, 84th Cong., 1st Sess. (introduced in 1955):

> "Sec. 5. (a) It shall be unlawful except with the prior approval of the Board

(3) for any bank holding company or subsidiary thereof, *other than a bank,* to acquire all or substantially all of the assets of a bank." (Italics supplied.)

Hearings before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. on S. 880, S. 2350 and H.R. 6227 (July 5, 6, 7, 11, 12 and 14, 1955), pp. 2-3.

H.R. 6227, 84th Cong., 1st Sess. (introduced in 1955):

"Sec. 5. (a) It shall be unlawful except with the prior approval of the Board

(3) for any bank holding company or subsidiary thereof, *other than a bank,* to acquire all or substantially all of the assets of a bank." (Italics supplied.)

Hearings before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. on S. 880, S. 2350 and H.R. 6227 (July 5, 6, 7, 11, 12 and 14, 1955), p. 25.

APPENDIX B

Extracts from Bills Dealing with Bank Holding Companies —Sections Containing the Phrase, "no application shall be approved under this section".

H.R. 6594, 82d Cong., 2d Sess. (introduced in 1952):

"Sec. 5. (d) Notwithstanding any other provision of this section, *no application shall be approved under this section* which will permit (1) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any bank located outside of the State in which such bank holding company or subsidiary thereof maintains its principal office and place of business or in which it conducts its principal operations; (2) any bank holding company or subsidiary thereof which owns or controls in any manner a bank located in a State, the laws of which do not authorize

the operation of branches by banks, to acquire, directly or indirectly, any voting shares of or interest in or all or substantially all of the assets of any additional bank located in any such State." (Italics supplied.)

Hearing before the House Committee on Banking and Currency on H.R. 6504, 82d Cong., 2d Sess. (June 24, 1952), p. 3.

S. 1118, 83d Cong., 1st Sess. (introduced in 1953):

"Sec. 5. (d) Notwithstanding any other provision of this section, *no application shall be approved under this section* which will permit (1) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any bank located outside of the State in which such bank holding company or subsidiary thereof maintains its principal office and place of business or in which it conducts its principal operations; (2) any bank holding company or subsidiary thereof to acquire, directly or indirectly, any voting shares of or interest in or all or substantially all of the assets of any additional bank except in conformity with the laws governing branches of banks in such State." (Italics supplied.)

Hearings before the Senate Committee on Banking and Currency, 83d Cong., 1st Sess. on S. 76 and S. 1118, part 1 (June 10, 11 and 12, 1953) p. 6.

H.R. 2674, 84th Cong., 1st Sess. (introduced in 1955):

"Section 5. (c) Notwithstanding any other provision of this section, *no application shall be approved under this section* which will permit (1) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which such bank holding company or subsidiary thereof maintains its principal office and place of business or in which it conducts its principal operations; (2) any bank holding company

or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank, except (i) within geographic limitations that would apply to the establishment of branches of banks under the statute law of such State, or (ii) unless such acquisition is at the time authorized by the statute law of such State by language specifically granting such authority affirmatively, and not merely by implication." (Italics supplied.)

Hearings before the House Committee on Banking and Currency, 84th Cong., 1st Sess. on H.R. 2674 (February 28, March 1, 2, 3, 4, 7, 8 and 9, 1955), p. 3.

S. 880, 84th Cong., 1st Sess. (introduced in 1955):

"Sec. 5. (c) Notwithstanding any other provision of this section, *no application shall be approved under this section* which will permit (1) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which such bank holding company or subsidiary thereof maintains its principal office and place of business or in which it conducts its principal operations; (2) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank, except (i) within geographic limitations that would apply to the establishment of branches of banks under the statute law of such State, or (ii) unless such acquisition is at the time authorized by the statute law of such State by language specifically granting such authority affirmatively, and not merely by implication." (Italics supplied.)

Hearings before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. on S. 880, S. 2350 and H.R. 6227 (July 5, 6, 7, 11, 12 and 14, 1955), p. 3.

H.R. 6227, 84th Cong., 1st Sess. (introduced in 1955):

"Sec. 5. (c) Notwithstanding any other provision of this section, *no application shall be approved under this section* which will permit (1) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which such bank holding company or subsidiary thereof maintains its principal office and place of business or in which it conducts its principal operations; (2) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank, except (i) within geographic limitations that would apply to the establishment of branches of banks under the statute law of such State, or (ii) unless such acquisition is at the time authorized by the statute law of such State by language specifically granting such authority affirmatively, and not merely by implication." (Italics supplied.)

Hearings before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. on S. 880, S. 2350 and H.R. 6227 (July 5, 6, 7, 11, 12 and 14, 1955), p. 25.

APPENDIX C

Extract from First Annual Report of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, May 7, 1958 (printed in Federal Reserve Bulletin, July, 1958, pp. 776, 787-789):

"15. *Board approval for holding company banks' absorption of other banks* [*sec. 3(a)(3)*].—Section 3(a) now requires Board approval before a holding company may acquire bank stock either directly or indirectly, and also before a holding company or any of its subsidiaries, 'other than a bank,' may acquire directly or indirectly 'all or substantially all of the assets of a bank'. This al-

lows a bank in a holding company system to absorb another bank without the prior approval of the Board. It can be argued that this provision seriously weakens the act with respect to one of its major purposes—namely, to control the expansion of bank holding companies.

"It seems clear that Congress did not intend to control, through the Holding Company Act, what may be called the 'internal' expansion of the banking activities of holding company systems. A holding company bank may expand its deposits, loans, and other phases of its business, and may establish additional offices (where permitted by applicable laws) without regard to the Holding Company Act. However, the legislative history of the act reveals a general intent that a holding company system should not be permitted to absorb existing banking institutions except in accordance with its provisions.

"There are two methods by which a holding company system may absorb an existing independent bank: (1) it may acquire the controlling stock of the bank or (2) it may arrange to have the independent bank merge or consolidate with, or sell its business to, a holding company bank. The Holding Company Act applies to '(1)' but not to '(2)'; the question is whether this distinction is sound in principle.

"The argument has been advanced that the act should not apply to acquisitions via merger, consolidation, or purchase of assets, because such acquisitions are already subject to supervisory control—that is, either the merger or the usual consequent establishment of a branch, or both, must have the prior approval of a Federal or State bank supervisory authority or in some cases, both. It is true that this is usually the case and that the situation differs in that respect from a holding company's purchase of the stock of an existing bank, which ordinarily is subject to no governmental control other than that provided by the Holding Company Act.

"However, it does not appear that Congress intended to exclude additional-bank expansions of holding companies whenever they are subject to control by other governmental agencies in the banking field. A con-

spicuous example is the establishment of new banks by holding companies. No new national bank may be established without the prior approval of the Comptroller of the Currency, and no new State bank without the prior approval of the State bank chartering authority. Nevertheless, under section 3(a)(2) of the act a holding company may not establish any new bank 'except with the prior approval of the Board' in addition to that of the bank-chartering authority.

"It is to be noted also that the Senate Banking Committee, in commenting upon section 3(a)(3) stated:

> 'Acquisition of assets, as well as acquisition of stock, may be used to gain practical control of a bank's operations, especially at the existing site of operations. In order to encourage competitive banking and discourage monopoly of banking, this bill provides regulatory control over both types of acquisition (S. Rept. No. 1095 (84th Cong.), pt. 1, p. 8).'

This statement evidences the committee's concern with expansion via absorption of independent banks, but section 3(a)(3) does not effectively deal with this problem. That provision relates only to acquisition of the assets of an existing bank by a holding company or a nonbanking subsidiary. In actuality, however, such corporations rarely if ever acquire a bank's assets, and certainly their acquisition of a bank's assets could not 'be used to gain practical control of a bank's operations, especially at its existing site of operations,' which apparently was the committee's principal focus in this connection. Control of the kind described can be achieved only when a banking subsidiary of a holding company takes over an independent bank. Consequently, it appears that section 3(a)(3) in its present form is practically a nullity, and does not reach the problem referred to by the Senate Banking Committee.

"It is recognized that duplication of governmental regulation should be avoided wherever possible. But it is not clear that the objectives of the Holding Company Act will be carried out consistently by the various State and Federal supervisors in passing upon mergers (or

branch applications in connection therewith); in fact, there might be some question as to the authority of State bank supervisors to disapprove a proposed merger on the ground that it would be inconsistent with the purposes of the Federal Bank Holding Company Act. Consequently, on balance it is the conclusion of the Board that effectuation of the purposes of the act requires that holding-company banks' absorption of independent banks, by merger or otherwise, should be subject to the provisions of section 3 of the act.

"Mention should be made of the relationship of this recommendation to the prohibitions of section 3(d). Those prohibitions were intended, generally speaking, to prevent a holding company from expanding outside its 'home' State by purchase of bank stock or acquisition of the assets of additional banks. At the present time, however, by virtue of the exception in section 3(a)(3) with respect to banks absorptions of other banks, if a holding company owned one or more banks in a particular State on May 9, 1956, it may absorb additional banks in that State through merger or purchase of assets to the full extent permitted by State law or the National Bank Act, whichever is applicable.

"If the bank-merger exception in section 3(a)(3) is deleted as here suggested, and no other action were taken in this area, the result would be that, for practical purposes, section 3(d) would completely prevent any expansion of holding companies out-of-State subsidiary banks by absorption of other banks. However, the Board believes that such an absolute prohibition of absorptions, regardless of circumstances, would not be in the public interest, and consequently it recommends amendment of section 3(d) to permit such absorptions by out-of-State subsidiary banks when approved by the Board pursuant to section 3(a). This would not in any way cut down the present coverage of section 3(d) but would simply make that subsection inapplicable in the case of acquisitions of bank assets that would now be brought within the purview of section 3(a) for the first time.

"The question may be raised as to whether the general principle of section 3(d)—prevention of out-of-

State expansion by acquisition of additional banks—does not apply to acquisitions via mergers as well as to acquisitions via purchases of bank stock. The Board has never favored the absolute-prohibition approach of section 3(d), and therefore would not favor extension of that approach into a new area even if such extension were called for by strictly logical application of the principle.

"In addition, however, it is pointed out that an acquisition via merger (or similar absorption) almost invariably can be consummated only if approved by the appropriate State or Federal bank supervisory authority, whereas in many instances this is not necessary with respect to purchase of bank stock. Consequently, acquisitions through merger can occur only if the absorption is desirable (or at least acceptable) from the bank supervisory viewpoint, which provides some assurance that the absorption will be in the public interest as far as banking service is concerned. The Board considers this circumstance an additional reason for excluding such absorptions from the prohibitory provisions of section 3(d) and for permitting such out-of-State absorptions when approved by the Board on the basis of the factors enumerated in section 3(c).

"In this connection, it would seem that the general public policy regarding out-of-State expansion by bank holding companies, as embodied in section 3(d), would constitute a relevant element of the 'public interest' within the meaning of section 3(c), and that consequently the Board would be justified in applying more restrictive standards in passing upon proposed absorptions of banks located outside the 'home state' of the bank holding company.

"For the foregoing reasons, the Board recommends that the words 'other than a bank' in section 3(a)(3) be deleted, but that at the same time section 3(d) be amended so as not to preclude approval by the Board of the acquisition of bank assets by a holding company's subsidiary bank in another State."

APPENDIX D

Extract from the 1960 Annual Report to Congress of the Board of Governors of the Federal Reserve System:

"Under present law, a bank in a holding company system may expand by absorbing another bank without obtaining the prior approval of the Board of Governors under the Bank Holding Company Act. In its May 7, 1958 Report, the Board expressed the view that effectuation of the purposes of the Act required that a holding company bank's absorption of an independent bank, by merger or otherwise, should be subject to the provisions of the Act.

"On May 13, 1960, Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828) was amended to provide that, in practically all cases, bank mergers and absorptions must have the prior approval of one of the Federal bank supervisory agencies and that those agencies must take into consideration factors that are substantially similar to those enumerated in the Bank Holding Company Act. In view of the provisions of this so-called Bank Merger Act, the Board believes that extending the coverage of the Holding Company Act to comprise bank mergers involving holding company banks would produce an unjustified duplication of supervision. Accordingly, the Board withdraws its recommendation (Recommendation 15 of the May 7, 1958 Report) that the Holding Company Act be amended in this respect."

47th Annual Report of the Board of Governors of the Federal Reserve System, 1960, pp. 98-99.

APPENDIX E

Letter from Chairman Wm. McC. Martin, Jr. of the Board of Governors of the Federal Reserve System to Congressman Wright Patman:

"Board of Governors of the Federal Reserve System,
Office of the Chairman,
Washington, April 17, 1962.

Hon. Wright Patman,
Chairman, Select Committee on Small Business,
House of Representatives, Washington, D. C.

Dear Mr. Chairman:

This refers to your letter of April 7, 1962, regarding the recently approved merger of Bank of Idaho, Boise, Idaho, and The First National Bank of Bonners Ferry, Bonners Ferry, Idaho. Bank of Idaho is a subsidiary of Western Bancorporation, a bank holding company. You inquire as to the application of section 3(d) of the Bank Holding Company Act of 1956 to the merger, and also as to application of the section to a possible merger of Walker Bank & Trust Co., Salt Lake City, which also is a subsidiary of Western Bancorporation, with The First National Bank of Price, Price, Utah.

[Citation of Sec. 3(d) of the Bank Holding Company Act omitted.]

Section 3(a) of the Bank Holding Company Act requires the Board approval under that act before a bank holding company may acquire bank stock (with certain exceptions), and also before a holding company or any of its subsidiaries, other than a bank, may acquire all or substantially all of the assets of a bank. The underlined exception allows a bank in a holding company system to absorb another bank without prior approval under the Bank Holding Company Act, and no application would be made under that act with respect to such a transaction. Accordingly, section 3(d) of the Bank Holding Company Act does not apply to such a merger of banks, even though the continuing bank is to be a subsidiary of a bank holding company.

The general subject of the relationship of the Bank Holding Company Act to a merger involving a bank in a hold company system is discussed at pp. 98-99 of the Board's annual report for the year 1960, and an excerpt is attached for convenient reference.

Sincerely yours,

Wm. McC. Martin, Jr."

Bank Holding Companies—Scope of Operations and Stock Ownership, published by the House Committee on Banking and Currency, 88th Cong. (May 20, 1963), p. 27.